732

SUPREME COURT OF THE UNITED STATES.

No. 71.

CHARLES F. HOZEY, PLAINTIFF IN ERROR,

vs.

WILLIAM BUCHANAN.

IN ERROR TO THE CIRCUIT COURT UNITED STATES, FOR EAST LOUISIANA.

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S. D. Langtree, Print.

7.33

CIRCUIT COURT OF THE UNITED STATES,
Ninth Judicial Circuit,
Eastern District of Louisiana.

Be it remembered, that on the thirteenth day of March, 1839, came into court William Buchanan, by his attorneys Messrs. Peyton and Thomas N. Peirse, and filed the following petition, to wit:

To the honorable the Judges of the Circuit Court of the United States, for the ninth judicial circuit in and for the eastern district of Louisiana.

The petition of William Buchanan, who is a citizen of the State of Tennessee, and who resides in Wilson county, in said State of Tennessee, respectfully shews,

That Charles F. Hozey, who is the sheriff of the parish of Orleans, and the city of New Orleans, and who is a citizen of the State of Louisiana, and who resides in the city of New Orleans, in the eastern district of Louisiana, is justly and truly indebted to your petitioner in the just and full sum of twelve thousand dollars, for this.

That at and before the time of the committing the wrong and injury hereinafter complained of, your petitioner was the owner of a certain steamboat called the Nashville, then lying and being in the port of New Orleans, and running in the trade from the said port of New Orleans to Bayou Sarah, of the value of twelve thousand dollars. That said steamboat had been chartered by Energy Hardwick and Sange Renaud, from your petitioner and one W. Wilkinson, who at that time was the owner of one fifth of said steamboat, on the 12th day of January, A. D. 1839, by notarial act before William Christy, Esq., notary public in and for the city of New Orleans, until the first of March, A. D. 1839, at the rate of eight hundred dollars per month. And in said contract of charter party, it was agreed between the parties that said Hardwick & Songe Renaud should, at the expiration of said charter party purchase said steamboat for the sum of eight thousand dollars cash.

Petitioner further alleges that on the 13th day of January, A. D. 1839, he purchased from said Wilkinson his interest in said boat, that being one fifth of the same, for and in consideration of the sum of twelve hundred dollars ($1200), petitioner assuming the debts and liabilities of said steamboat; for which sum of twelve hundred dollars your petitioner execcuted his note to said Wilkin-

son, due the first day of March, A. D. 1839, as will more fully appear by reference to the private act of sale from said Wilkinson to your petitioner hereunto annexed for reference.

Petitioner further alleges that the said Wilkinson delivered possesson of said steamboat to him on the 13th day of Januaıy, 1839, and that said steamboat had made one voyage, as your petitioner's property, subject to the charter party aforesaid, your petitioner being aboard during said voyage, and continued and remained on board said steamboat until the eighteenth or nineteenth day of January, A. D. 1839, when the said steamboat was illegally and wrongfully seized by said Hozey, his deputy or agent, as the property of said Wilkinson. And afterwards, on the 4th day of March, A. D. 1839, did illegally and wrongfully sell the same as the property of said Wilkinson. And your petitioner alleges that said Wilkinson, at the time of the seizure and the sale of the said steamboat had no interest in the same, all which was well known to the said Hozey.

Your petitioner further alleges that when the said Hozey, his agent or deputy came on board said steamboat to make the aforesaid seizure, that said Hozey, his agent or deputy, was fully apprised and informed of all the aforesaid facts.

And that afterwards the said Hozey released said steamboat. But that after the release of the said steamboat, on S. W. Oakey & Co., executing a bond of indemnity to said Hozey, did again illegally and wrongfully seize and retain in his possession, and proceeded to advertise for sale the said steamboat ; and did as aforesaid, on the 4th day of March, illegally and wrongfully sell said steamboat at a great sacrifice. By all which premises your petitioner lost the sale and value of said boat as aforesaid, together with the loss of the hire of the aforesaid steamboat ; and by said illegal and wrongful seizure of said steamboat, has been harrassed by many suits to the great annoyance and expense of your petitioner.

And in consequence of all which said premises your petitioner has sustained damage to the said amount of twelve thousand dollars. Your petitioner further alleges that the said Charles F. Hozey, although thereunto amicably requested, refuses to pay the amount for which he is indebted as aforesaid.

Petitioner therefore, in consideration of the premises, prays that the said Charles F. Hozey may be cited to appear and answer this petition, and that after due proceedings had, he be condemned to pay unto petitioner the aforesaid sum of twelve thousand dollars, that being the amount of damages sustained by your petitioner as aforesaid, and costs of suit. And petitioner asks for all further and general relief which the nature of the case may require, and for trial by jury.

Signed PEYTON & THOMAS N. PEIRCE,
Attorneys for Plaintiff.

The foregoing petition is endorsed as follows:
Filed March 13th, 1839.
Signed, HOIT. *Dy. Clerk.*

And afterwards, to wit, on the 15th day of March, 1839, the following citation issued from the clerk's office:

Citation to Charles F. Hozey.

UNITED STATES CIRCUIT COURT,
Ninth Circuit, setting in and for the Eastern District of Louisiana.

To Charles F. Hozey:

You are hereby summoned to comply with the prayer of the annexed petition, or file your answer thereto in writing in the office of the clerk of the circuit court of the United States for the eastern district of Louisiana, in the city of New Orleans, within ten days from service hereof, or judgment will be given against you by default.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this fifteenth day of March, 1839, and 63d year of the Independence of the United States.

Signed, J. G. A. HOIT,
Deputy Clerk.

WILLIAM BUCHANAN
vs. } No. 423.
CHARLES F. HOZEY.

The foregoing citation is endorsed as follows:

Received, March 15th, 1839, and on the 16th same month served a copy of the within citation, together with a certified copy of plaintiffs' petition, and other documents thereto annexed, on Charles F. Hozey, the defendant, in person, at New Orleans. Returned March 16th, 1839.

Signed, J. H. HOLLAND,
Marshal.

And afterwards, to wit, on the 9th of April, 1839, the following answer of the defendant was filed by his attorney, G. B. Duncan, Esquire:

CIRCUIT COURT, *9th Circuit,*
Eastern District of Louisiana.

CHARLES F. HOZEY
vs.
WILLIAM BUCHANAN.

The defendant, Charles F. Hozey, sheriff of the parish of Orleans, comes now in answer the demand of said plaintiff, denies all and singular the allegations in said petition contained, except as they are herein specially admitted. And for further answer to so much of said petition as he is advised and believes is material to be answered; and first reserving to himself the benefit of the many errors, omissions, and inconsistencies in said petition contained; denies that said plaintiff ever had any interest in the steamboat Nashville. He says, that true it is, in his official capacity of sheriff of the parish of Orleans, he received a writ of fi. fa. addressed to him, from the honorable the court of the third judicial district of the State of Louisiana, holding sessions for the parish of East Feliciana, issued on a judgment in said court, in favor of S. W. Oakey & Co. vs. C. McCantle & Co., or Cullen McCantle and Wm. Wilkinson, in which judgment one W. Wilkinson was defendant; that the said writ, so being in his hands, and the steamboat Nashville then being within the parish of Orleans, and belonging to the defendant in execution, said Wilkinson, this defendant, as he was bound to do, did seize the said steamboat, and sold her at public auction, after all the requisitions of the laws of the State had been fully complied with. That said Buchanan was present in the city of New Orleans when said boat was advertised and sold; that said Buchanan took no proceedings to establish his alleged rights to said boat, or to prevent the sale thereof, but voluntarily permitted this respondent to execute said writ; has lost all right against this defendant, if he ever had any. It is denied that said Wilkinson, the defendant in the execution, was the owner of the steamer Nashville, and this respondent was bound to seize and sell her. That if any sale had been made by Wilkinson to the petitioners, of said boat, the same was not done with the formalities of the law; and that any such sale, if made, was fraudulent and void, as made with the intent to defraud the creditors of Wilkinson out of their just rights, and for the purpose of enabling said Wilkinson to delay, hinder, and defeat the claims of his honest creditors. He further avers that he took said boat into his possession under and by authority of the writ aforesaid, and that the said property was siezed as belonging to said Wilkinson; and that this respondent had no right to decide the claim or right of property therein, but that the laws of Louisiana provide the remedy in such cases, which the plaintiff having failed to pursue hast lost all claim as against this respondent. He avers that in the premises he acted in his official capacity, and did nothing but what he was authorized to do, and cannot be held amenable to this tribunal for his

official acts. He prays leave to reserve to himself all legal means of defence; and, joining the plaintiff in his prayer that this case may be tryed by a jury, he prays to be hence dismissed with costs.

Signed G. B. DUNCAN,
Attorney for Defendant.

The foregoing answer is endorsed as follows:

"Filed April 9th, 1839.

Signed HOIT, *Dy. Clerk.*"

Afterwards, to wit, on the 14th day of June, 1839, the following notice of trial was served on G. B. Duncan, Esq., of counsel for defendant:

CIRCUIT COURT OF THE UNITED STATES,
9th Judicial Circuit, and Eastern District of Louisiana.

WILLIAM BUCHANAN
vs.
CHARLES F. HOZEY. } No. 423.

At the request of Balie Peyton, Esq., of counsel for the plaintiff, this case is fixed for trial, for Wednesday, the 19th day of June, 1839, as per order of court entered of record on the eighth day of June, 1839.

Witness my hand and the seal of the court, at New Orleans,
[L. S.] this fourteenth day of June, 1839.

Signed DUNCAN N. HENNEN, *Clerk.*

The foregoing notice of trial is endorsed as follows:

"Received June 15th, 1839. Served same day a copy of the within on G. B. Duncan, Esq., attorney, by leaving the same with his brother, at his office.

Signed L. C. BACON,
Deputy Marshal."

UNITED STATES CIRCUIT COURT,
Ninth Circuit, Eastern District of Louisiana.

WEDNESDAY, *June 19th*, 1839.

The court met, pursuant to adjournment. Present: Hon P. K. Lawrence, district judge.

WILLIAM BUCHANAN
vs.
CHARLES F. HOZEY. } No. 423.

This cause, which had been set for this day, was ordered to be continued to the next term, in the absence of the parties or their attorneys.

THURSDAY, *January* 16, 1840.

The court met, pursuant to adjournment. Present: Hon. P. K. Lawrence, district judge.

WILLIAM BUCHANAN *vs.* CHARLES F. HOZEY. } No. 423.

On this day came the parties, by their attorneys, and thereupon came a jury, to wit: Eranste Blanc, P. O. Sorbe, Robert Shaw, J. L. St. Cyr, C. H. Taney, Spencer Gloyd, P. Conrotte, J. B. Plauche, J. M. Marstentein, J. B. Lambert, Alexander Legendre, and P. Shields, who were sworn well and truly to try the issue joined between the parties, and a true verdict give according to the evidence; who, having heard the evidence and arguments of counsel, under the charge of the court, retired to their room to consider of their verdict, and soon returned with the following, which was ordered to be recorded, and is as follows, to wit:

The jury find a verdict for the plaintiff, in the sum of eight thousand five hundred dollars, nett.

New Orleans, January 16th, 1840.

Signed L. ST. CYR, *Foreman.*

Whereupon it is considered by the court that judgment be entered up in favor of the plaintiff and against the defendant, Charles F. Hozey, in the sum of eight thousand five hundred dollars, and for costs of suit, to be taxed.

Judgment entered January 16th, 1840; judgment signed January 25th, 1840.

Signed P. K. LAWRENCE,
U. S. Judge.

Affidavit of Wm. Buchanan.

CIRCUIT COURT, *in and for the ninth Judicial Circuit of the United States and Eastern District of Louisiana.*

WILLIAM BUCHANAN, *vs.* CHARLES F. HOZEY, Sheriff of the Parish of Orleans. }

The plaintiff in above entitled case (William Buchanan) being duly sworn, says that Francis Wills, Energy Hardwick, John G. Hall and Mr. Davis & Mr. Hicks, both last of the firm of Hicks Vanlier & Co. and reside out of this State and others, are material witnesses in behalf the plaintiff in the above entitled cause, (this deponent) and without their testimony he connot safely go to trial. That F. Wills, and J. G. Hall are about to leave the State

of Louisiana, and plaintiff fears he will lose the benefit of their testimony, without a commission to take their depositions is granted.

Signed WILLIAM BUCHANAN.

Sworn and subscribed before me in the city of New Orleans this 13th March 1839.

Signed P. K. LAWRENCE,
U. S. Judge.

The foregoing affidavit is endorsed as follows. Be it so, reasonable notice being given to the opposite party or his attorney.

Signed P. K. LAWRENCE,
U. S. Judge.

Consent for Commissions to Issue.

CIRCUIT COURT, *in and for the 9th Judicial Circuit, and Eastern District of Louisiana.*

WILLIAM BUCHANAN,
vs.
CHARLES F. HOZEY.

We consent that commissions may issue in the above entitled case to take the depositions of witnesses whose evidence may be read at the trial of the above entitled cause, subject to all legal exceptions, except as to the form and manner of taking the same. Waiving affidavit and all exceptions, except to substance of said evidence.

Signed PEYTON & T. N. PEIRSE.
Attorneys for Plaintiff.

Signed L. C. DUNCAN,
For Defendant.

CIRCUIT COURT, *in and for the 9th Judicial Circuit and Eastern District of Louisiana.*

WILLIAM BUCHANAN,
vs.
CHARLES F. HOZEY.

It is hereby agreed that in case the plaintiff cannot produce the bill of sale of the boat Nashville, the subject of this suit, the plaintiff may offer secondary evidence of the fact, and his own affidavit taken in Tennessee, before any magistrate, whose official character need not proved, stating the loss of the bill of sale—

New Orleans, 19th June 1839.

Signed L. C. DUNCAN,
For Defendant.

The above agreement is endorsed as follows — Filed June 20th 1839.

Signed D. N. HENNEN, *Clerk*,
by L. C. HORNSBY, *Dy. Clerk*.

CIRCUIT COURT OF THE UNITED STATES,
Eastern District of Louisiana.

WILLIAM BUCHANAN,
vs.
CHARLES F. HOZEY.

William Buchanan, the plaintiff in the above entitled case, being duly sworn, makes oath, that W. W. Northrop is a material witness in his behalf that, and that deponent cannot safely go to trial without his evidence. That said W. W. Northrop is about to leave the State of Louisiana before the trial of the above entitled case, and without a commission is granted to take the deposition of said Northrop he will loose the benefit of his evidence.

Signed WILLIAM BUCHANAN.

Subscribed and sworn before me, this 11th December 1839.
Signed A. PIERSE, *Dy. Clerk*.

The foregoing affidavit is endorsed as follows — Filed 11th December 1839.

Signed A. PIERSE, *Dy. Clerk*.
for D. N. HENNEN, *Clerk*.

BUCHANAN,
vs.
HOZEY.

We consent to the taking of the depositions of John Waller and Energy Hardwick and others, waiving all exceptions as to manner and form of taking the same.

Signed L. C. DUNCAN,
For Defendant.

The foregoing consent to take testimony &c., is endorsed as follows—Filed December 23, 1839.

Signed HENNEN, *Clerk*.

Charter Party of Steamboat Nashville.

STATE OF LOUISIANA, *City of New Orleans.*

Be it known that this day, before me, William Christy, a notary public in and for the city and parish of New Orleans, State of Louis-

iana aforesaid, duly commissioned and qualified, personally came and appeared William Buchanan, of Nashville, in the State of Tennessee, and William Wilkinson, of the State of Mississippi, owners of the steamboat called the Nashville, parties hereto of the one part, and with them came and appeared Ennergy Hardwick, of the State of Louisiana, and Songy Reynaud, of this city, parties hereto of the other part, which said appearers declared that they had contracted and agreed, and do, by these presents, mutually contract, agree and bind themselves, the one party unto the other party as follows, to wit:

The said parties of the first part do, by these presents, let and hire unto the said parties of the second part, the said steamboat Nashville until the first day of March next, upon the terms and conditions following, to wit: the said parties of the second part are to run the said steamboat as a packet between this city and Plaquimine until the waters rise, and then in the Lafourche at the discretion of the said parties of the second part.

The said parties of the second part receive the said steamboat as shei s, and bind themselves to return her in the same order and condition, nature's decay, wear and tear, and accidents of providence, excepted, and to make all such repairs on the said boat as the owners thereof would have to make without calling on the insurance office.

And the said parties of the second part, hereby bind themselves to pay to the said parties of the first part for the hire of said boat the sum of eight hundred dollars per month, in the instalments following, to wit: three hundred dollars on the signing of these presents, five hundred dollars on the first day of February next, and the balance on the said first day of March next.

And the said parties of the first part hereby bind themselves to sell and convey, and the said Ennergy Hardwic binds himself to purchase the said steamboat Nashville, at the expiration of this charter party, for the sum of eight thousand dollars cash, less the amount which will, at that time, have been paid by the said parties of the second part, for the hire of said boat, as above stipulated for. And in case he, the said Hardwick, shall fail to purchase the said steamboat as aforesaid, he hereby binds himself to pay to the said parties of the first part the sum of one thousand dollars.

And here personally came and appeared ———, who intervening in these presents, and having read what is above written, declared that he hereby binds himself to the said Buchanan and Wilkinson, as surety for the said Hardwick, that he the said Hardwick shall well and truly pay the said sum of one thousand dollars in case he should not buy the said boat as aforesaid.

This done and passed at New Orleans aforesaid on this twelfth day of January, eighteen hundred and thirty-nine, in presence of

W. G. Latham and H. C. Chinn, witnesses, who hereunto sign their names with the said parties and me, notary.

Original signed.

E. HARDWICK,
WM. WILKINSON,
WM. BUCHANAN,
SONGY REYNAUD,
W. G. LATHAM,
H. C. CHINN,
WM. CHRISTY, *Not. P.*

A true copy of the original.

(Signed.) WM. CHRISTY, *Notary Public.*

NEW ORLEANS, 15*th March*, 1839.

Enrolment, Steamer Nashville.

No. 3.

Enrolment in conformity to an act of Congress of the United States of America entitled an act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same.

Edward D. Hicks, having taken or subscribed the oath required by said act, and having sworn that himself, Robert Baxter, Anthony W. Vanlier and Amon L. Davis are citizens of the United States, sole owner of the ship or vessel called the Nashville, of Nashville, whereof Amon L. Davis is at present master, and as he hath sworn, is a citizen of the United States, and that the said ship or vessel was built at Jeffersonville, in the State of Indiana, in the year 1835, by William and George French, as appears per their certificate on file in this office, and also by her enrolment, dated at this port 1st day of June, 1836, numbered 6, now surrendered, property changed; and Joel M. Smith, surveyor of the port, having certified that the said ship or vessel has one deck, and no mast, and that her length is one hundred and twenty-nine feet, one inch, her breadth eighteen feet, her depth five feet nine inches, and that she measures one hundred and twenty-eight 87‖95 tons. That she is a steamboat, has a pink stern cabin on upper deck and no figure head. And the said Edward D. Hicks, having agreed to the description and measurement above specified, and sufficient security having been given according to the said act, the said steamboat has been duly enrolled at the port of Nashville.

Given under hand and seal at the port of Nashville, this 12th day of January, in the year one thousand eight hundred and thirty-eight.

(Signed.) T. M. SMITH,
Surveyor.

I certify that this is an exact copy on the books in this office, of the enrolment of the steamboat Nashville, and that there is no other registry kept of bills of sale, only the surrender of their license and enrolment on change of property.

(Signed.) JOSEPH LITTON,
Surveyor of the Port of Nashville.

NASHVILLE, *December 24th*, 1839.

Testimony of John Gwyn.

WILLIAM BUCHANAN, *vs.* CHARLES F. HOZEY, Sheriff of the Parish of Orleans. } Circuit Court of the United States for the 9th judicial circuit, in and for the eastern district of Louisiana.

Evidence taken by consent of the parties, subject to all legal exceptions, save as to the form and manner of taking the same.

John Gwyn, being duly sworn, deposes and says, that he was carpenter on the steamboat Nashville, about the eleventh day of September, A. D. 1838, and has continued in that capacity ever since, whilst the said boat had been running. That he came on board the Nashville at Smithland, in the State of Kentucky, at the time before stated, and came to the city of New Orleans; that he reached the said port of New Orleans in the latter end of November, A. D. 1838, William Wilkinson being then master of said boat. That the said Wilkinson ran the Nashville in the Red river and Bayou Sarah trade, making her first voyage to Baton Rouge, her second to Red river, touching at Bayou Sara, and the third to Bayou Sara, where she discharged her cargo, and returned to New Orleans, during all which time said Wilkinson was master.

Deponent further says, that William Buchanan came down and went on board the Nashville about the first of December, A. D. 1838. That a few days before the said boat was chartered to Hardwick and Songy Renaud by Wilkinson and Buchanan, he, deponent, heard a conversation between the two latter on the subject of Wilkinson's selling out his interest to Buchanan, &c. That he thinks that at or about the same time, said proposed sale was spoken of amongst the crew of the said boat. That the sale from Wilkinson to Buchanan was finally concluded on the Monday next following the charter of said boat as aforesaid, which he believes to have been about the thirteenth or fourteenth day of January, A. D. 1839. That he was not a witness to the contract, but came into the Social Hall, and when Wilkinson came out of the clerk's office, where the contract was signed, as he understood, he heard him say that he had sold out his interest to Buchanan for twelve hundred dollars, holding in his hand a paper which deponent supposed was a note.

Deponent states that Wilkinson gave possession of said boat immediately to Buchanan, and then took lodgings in the city of

New Orleans, and soon afterward went on board of the steamboat Houma as master, and that Wilkinson was absent from the city of New Orleans, when the steamboat Nashville was seized by the sheriff, (defendant.)

Witness further deposes, that he never heard of the existence of the debt, by virtue of which said boat was seized, until the time of the seizure, and further deponent knows that the said Buchanan appeared to be very anxious to bond the said boat, that he used every exertion to enjoin the sale, but was unable to procure security to do so.

Cross Examined.

Is no relation of the plaintiff, has no interest in this suit, has never seen the charter party of which he speaks above, all he knows on the subject is from hearsay among the parties; deponent has a claim for his services, before the sale of the boat, the amount is about one hundred dollars, the claim is in the hands of Mr. Peyton for collection, he expected to be paid either out of the proceeds of the boat, or by Mr. Buchanan, when the boat arrived in New Orleans, the boat was taken over the river till they could sell her, or make arrangements to pay her debts, and it was over there that she was chartered; Buchanan as deponent has understood from Buchanan himself, lives somewhere near Nashville, and has some land and negroes, has been informed that Buchanan is a good deal in debt; deponent knows nothing of any efforts made by Buchanan to bond the boat, except what he heard from Buchanan himself. Deponent has heard the deposition of Mr. John G. Hall, read and confirms all the statements therein contained respecting the carrying off the keeper of the boat from New Orleans.

Re-examined by Plaintiff's Attorney, says.

He was in the employment of Captain Hardwick from the time of the charter party, that at the time the officer was carried off, Buchanan had no control of the boat whatever, and in fact he was not on board at the time she threw off from the warf, but came on board by passing through a skiff, the bow of which was at the Brilliant, and the stern at the Nashville. That he has obtained judgment, as he is informed by his counsel, and expects to get his claim out of the proceeds of the boat.

Signed, JOHN GWYN.

Sworn to and subscribed before me

Signed, J. G. A. HOIT, *De'y Clerk.*

New Orleans, April 30th, 1839.

Charles H. Latham being next sworn, states that he was on board of the Nashville in the capacity of mate, at the time she was seized by the sheriff, and had been from about the twenty-eighth day

of November, A. D. 1838. That he heard conversations between Buchanan and Wilkinson about a sale of the boat Nashville, several weeks before the sale from Wilkinson to Buchanan. That immediately after the sale from Wilkinson to Buchanan; the former delivered possession to the latter, and went aboard of the Houma as stated by John Gwyn in his deposition, that he has heard read, and deponent further states, that he never heard of the debt by virtue of which the boat was seized and sold by the sheriff, before the seizure; and that Buchanan appeared to be anxious to enjoin the sale of said boat, but that he was unable to give security, and that he believes that Buchanan was a stranger, who had but a few acquaintances in the city.

Cross Examined.

Is not related to the plaintiff, has a claim against the boat or William Buchanan, for about one hundred and twenty dollars, has heard the deposition of Mr. John G. Hall read, and confirmed the statements therein made, particularly in reference to the carrying off the keeper from New Orleans.

Re-examined by Plaintiff's Attorney, says.

He was in the employment of Captain Hardwick, from the time of the charter party, at the time the officer was taken off, Buchanan had no controul of the boat whatever, and in fact he was not on board at the time she threw off from the wharf, but came on board by passing through a skiff, the bow of which was at the Brilliant, and the stern at the Nashville, that he has obtained judgment, as he is informed by his counsel, and expects to get his claim out of the proceeds of the boat.

Signed, C. H. LATHAM.

Sworn to and subscribed before me

Signed, HOIT, *Dep'y Clerk.*

New Orleans, April 30th, 1839.

Testimony of John G. Hall.

John G. Hall, being next sworn, deposes and says that he came on board of the Nashville at Smithland, in Kentucky, in the capacity of engineer, on the 17th day of September, A. D. 1838, and continued in that capacity, on said boat, until the 7th of April, A. D. 1839; that the said Nashville arrived at the port of New Orleans about the latter end of November, A. D. 1838, after which she made two or three trips in the Bayou Sara trade; and that William Wilkinson was master of said boat during all these above mentioned trips, including the one from Smithland to New Orleans. Witness states that William Buchanan came on board the Nashville about the first day of December, A. D. 1838; that he often

heard conversations between Buchanan about one or the other selling out; and says it was generally understood, between the crew of the boat, that one or the other wished to sell out his interest in said boat to the other. That a day or two after Buchanan and Wilkinson chartered the said boat to Songe Reynaud and Hardwick, Wilkinson sold out his interest in said boat to Buchanan; and that on the same day that said sale was passed, Wilkinson showed witness a paper which he said was Buchanan's note, that he had sold out his interest in said boat to Buchanan; said Wilkinson saying, at the same time, that the note was for twelve hundred dollars; and witness states that on the same day of the sale Wilkinson took his trunk off the boat, went ashore, and also that he gave possession of the boat to Buchanan; and shortly after this Wilkinson went on board the Houma. Deponent further says that Wilkinson, at the time the steamboat Nashville was seized by the sheriff, defendant, was absent from the city of New Orleans; and further states that neither himself nor any of the crew, as far as he understood, knew of the existence of the debt by virtue of which the said boat was seized; says, further, that from every thing he saw that occurred at the time of sale, before and afterwards, he believed the sale to be *bona fide* between Wilkinson and Buchanan; that William Buchanan had very few acquaintances in the city of New Orleans, and that he appeared to be a stranger.

Cross Examined.

Deponent is not related to Mr. Buchanan, the plaintiff. Deponent has a claim for about three hundred and forty or fifty dollars for services on the Nashville; has put his claim in Mr. Peyton's hands, and expects to be paid, if not out of the proceeds of the boat, by Mr. Buchanan. He supposes Buchanan is able to pay him, because he has understood that Buchanan had a farm and negroes near Nashville. He knows nothing more of the sale between Buchanan and Wilkinson, that what he heard from their conversations. Deponent knows nothing of any efforts made by Buchanan to bond the boat when she was seized. When the boat was seized by the sheriff the officer came aboard in the evening, and the next morning about ten o'clock they started off and went to Plaquimine, carrying the officer with them. The officer protested against their removal of the boat, and came to the deponent, saying the boat was under his charge; and deponent shortly afterwards went to bed, and left the engine under charge of his assistant. The officer once attempted to put out the fires, but by orders of the captain, or somebody else, the fires were again made and the boat pushed off, though with scarcely steam enough to work her. The assistant told deponent that when the boat was shoved out there was not steam enough to work her. Buchanan, the plaintiff, was on board, and went up in the boat, and came down in her. They were absent about four or five days. The officer remained on board all

this time. Buchanan and others on board the boat were carrying on their jokes with the keeper, during all the time they were absent, about his being carried off.

Re-examined by plaintiff's counsel: Says he was in the employment of Captain Hardwick from the time of the charter party. At the time the officer was carried off, Buchanan had no control of the boat whatever, and in fact he was not on board at the time she threw off from the levee, but came on board in a skiff, as witness was informed, the bow of the skiff being at the Brilliant and the stern at the Nashville. That he has obtained judgment, as he is informed by his counsel, and expects to get his claim out of the proceeds of the boat.

Signed JOHN G. HALL.

Sworn to and subscribed before me, New Orleans, April 30th, 1839. Signed HOIT, *Dep'y Clerk.*

Testimony of Francis Wells, taken by consent.

WILLIAM BUCHANAN *vs.* C. F. HOZEY, Sheriff of the Parish of Orleans.	In the Circuit Court of the United States in and for the 9th judicial circuit and eastern district of Louisiana.

Francis Wells, being duly sworn, deposes and says that he was pilot on the steamboat Nashville while she was owned by Vanlear, Hicks & Co., of Nashville, Tennessee, and was in that capacity at the time of the sale of said boat to Buchanan and Wilkinson, on or about the 1st of April, A. D. 1838; that her cost was something over nine thousand dollars; Wilkinson paying two negroes, valued at eighteen hundred dollars, and purchasing that interest, and Buchanan the balance. That he continued on her as pilot up to the time of the seizure by the sheriff in the case of Oakey & Co. *vs.* McCarstle and Wilkinson. That, to his knowledge, Wilkinson was very anxious to sell out his interest to Buchanan, and heard him propose it July, A. D. 1838, when the boat was lying up at the mouth of Cumberland; that it was very often renewed, and that the trade finally took place between them according to a bill of sale marked "A," to which his name and that of W. M. Northrop are signed as witnesses; that he saw Northrop sign, and that he is a non-resident, now out of the State of Louisiana. He and Northrop signed in the presence of both parties; the trade was generally known and spoken of on the boat. Wilkinson immediately left the boat, and Buchanan remained on board and continued in possession, having taken a room on said boat, after she was chartered to Hardwick and Songe Reynaud, and so continued on board until she was seized by the sheriff. That Buchanan and Wilkinson chartered her to Hardwick and Songe Reynaud on or about the twelfth day of January, A. D. 1839; that the sale from Wilkinson to Buchanan took place on the thirteenth or fourteenth

day of January, A. D. 1839; that immediately after the sale Wilkinson delivered possession and left said boat, and took command as master of another boat called the Houma, and at the time of the seizure of the Nashville was master of the Houma on a voyage up the Red river. The sale of Wilkinson's interest to Buchanan was generally known and spoken of on the boat at the time it took place. That witness never heard of any such claim as that by virtue of which the boat was seized and sold, until the time of the seizure aforesaid. That said Wilkinson had been master of said boat from November, A. D. 1838, until the sale of his interest to Buchanan aforesaid, on the 13th or 14th day of January, A. D. 1839, and had made several voyages from New Orleans to points up the Mississippi before the time of the seizure; has no doubt but that the sale from Wilkinson to Buchanan was perfectly fair and *bona fide*. That the consideration of said purchase was twelve hundred dollars, together with the outstanding debts and liabilities of said boat, in a note payable on about the first of March, A. D. 1839; which note he saw delivered by Buchanan to Wilkinson at the time of the sale. That there was a bill of sale from Vanlear Hicks & Co. to Buchanan and Wilkinson, at the time of the sale of said boat, from the former to the latter; that witness saw said bill of sale frequently, it being in the desk, while he was pilot of said boat. That said bill of sale was lost, together with other valuable papers, by said Buchanan's dropping his pocket book into the river as he descended the river last December, as said Buchanan informed him upon his arrival in New Orleans. That said Buchanan was in the State of Tennessee, as he supposes, at least he was not in New Orleans at the time said Wilkinson entered the said boat in the custom-house at that port. That he is well acquainted with the handwriting of the said Wilkinson from having seen him frequently write. That a letter, signed by said Wilkinson, dated Smithland, Kentucky, September 9th, 1838, post-marked Smithland, Kentucky, September 11, directed to Captain William Buchanan, Lebanon, Tennessee, is in the handwriting of the said Wilkinson, and his signature to the same is genuine.

Cross Examined.

Buchanan, the plaintiff, was in New Orleans at the time when the boat was seized and sold by the sheriff at the suit of Oakey & Co. He heard Buchanan say while said boat was advertized for sale by the sheriff, that he would let them go on and sell the boat, and make them sweat for it afterwards. Knows that Buchanan was in New Orleans at the time when the said steamboat Nashville was sold by the sheriff; witness was not himself in the city on the day of sale, and Buchanan was the first person who informed him of the sale when he, the witness arrived in the city, some days after said sale. At the time the Nashville was sold she was indebted to the crew in about the sum of two thousand dollars, and the crew are

now endeavoring to obtain their wages out of the proceeds of the sale of said boat. The boat was indebted to witness as one of the crew, in the about the sum of five or six hundred dollars, which he has never demanded of Buchanan personally, but is seeking his pay out of the fund for which said boat sold. The Nashville was built in 1835, her deck was rotten, and in November last she was taken to a shipyard over the river and a new deck put on, at which time she was also corked. Buchanan is a farmer and has the reputation of being a wealthy man. Witness knows nothing of Buchanan's having lost his bill of sale from Vanlear, Hicks, & Co., to him and Wilkinson, of the Nashville, or any other papers except from the statements of Buchanan himself.

Signed, FRANCIS WELLS.

Sworn to and subscribed before me this 24th April, 1839.

Signed, O. P. JACKSON, *Judge*.

Letter of William Wilkinson to William Buchanan.

SMITHLAND, *Kentucky, Sept. 9th*, 1838.

DEAR SIR: I have this day arrived here and found you had left. I shall go on with the work of the boat. I think we can have her done in ten days; I will have all the wood work done this week. I done all I could with the claims in Louisville, and since I have come here I find that the boat has been tied up. I have seen the men and they are willing to compromise the suit and wait for their money. I have had the bricks hauled and will have the fire bed done to-morrow; John is here at work; Collins is gone. I will have every thing done as fast as possible, and hope to see you here soon. I am very sorry you have become so dissatisfied with me, as you are without any cause except a pack of damned lies from the start, which I am now able to prove to be lies. I have been informed that Mr. Hall told that I oed him, and so help me God I never new him one month ago, and besides I have proved to the people of this place he is a liar by his own acknowledgments. Since I have arrived here I have always acted towards you as if you had been my father; but I am here as you may say by myself, and the world again me, but damn them I will rise or die; I bid defiance to them all; the truth and honesty will prosper after a while. I am willing though if you wish me out tho' to go out on fair terms; I am willing to leave it to two men what I shall have; state the thing fairly to them; or I am willing just to let you have all but what I have paid in, you take up the notes and all but what I have paid, and then go on as before; I will pay $400 more and that will give me one fourth of her, and then I will go to Manchester and act as agent for her; when you come down we can be all straight. All I want is the fair thing, and I think you will know that is all I have ever tried to get; they tried to make a furse with us, but I hope as

we started in peace to end so. Come as soon as you can and you will find me here. I will do all I can. Give your family my best respects. I can get a full load here for New Orleans or Vicksburg. I hope if you are detained you will write me as soon as possible and let me know what to do. Yours, truly.

Signed, W. WILKINSON,

And directed as follows, to Capt. WM. BUCHANAN,

Lebanon, Tenn.

Bill of Sale of the Steamer Nashville from W. Wilkinson to Wm. Buchanan.

NEW ORLEANS, *January 13th*, 1839.

I do hereby certify that I have this day bargained, sold, and transferred all of my right, title, and interest in the steamboat Nashville and appurtenances, unto William Buchanan, for consideration of the sum of twelve hundred dollars, in a note of that sum payable on the first day of March 1839, said Wm. Buchanan taking upon himself the responsibility of all the debts contracted by the said boat since the second day of April 1838, and the payment of three notes held by Vanlear, Hicks & Co., against Wm. Wilkinson and Wm. Buchanan, for $2,317 50 cents, dated April 2d, 1838, payable six, twelve, and eighteen months after date.

Signed W. WILKINSON, [L. S.]

Witness
FRANCIS WELLS,
W. W. NORTHROP.

I admit the above signature is the given signature of W. Wilkinson. March 3d, 1839, for Oakey & Co.

Signed G. B. DUNCAN.

The foregoing bill of sale is endorsed as follows:

Filed April 4th, 1839.

Signed HOIT, *Deputy Clerk.*

Testimony of W. W. Northrop, taken by consent.

CIRCUIT COURT OF THE 9TH JUDICIAL CIRCUIT
OF THE UNITED STATES,
Eastern District of Louisiana.

WILLIAM BUCHANAN
vs.
CHARLES F. HOZEY.

Testimony of W. W. Northrop, taken by consent of parties, to be be read as evidence at the trial of the above entitled case, in be half of plaintiff, subject to all legal exceptions, except as to the form and manner of taking the same.

W. W. Northrop, being duly sworn, makes oath and says:

That he first went aboard the steamer Nashville some time in the month of June, 1838, as clerk of said boat, that he continued as clerk of said boat until the 12th day of January, 1839; during said time, the steamer Nashville belonged to Buchanan, the plaintiff, and W. Wilkinson. That witness attested the bill of sale from said Wilkinson to plaintiff of his, Wilkinson's interest in said steamer, as a witness; which bill of sale he saw this afternoon attached to the deposition of F. Wells, in the clerk's office of the circuit court of the United States, at New Orleans. That said bill of sale was drawn up by witness at the request of plaintiff and said Wilkinson; that he knows the bill of sale above referred to, as the one attached to the deposition of F. Wells, to be the same one drawn up by him, witness; that F. Wells, the other attesting witness, signed the same in his, witness presence; that witness saw plaintiff and said Wilkinson, in the act of signing said bill of sale, and said Buchanan and said Wilkinson both acknowledged their signatures to said bill of sale to witness, and called on him to attest the same, which he did: that witness was cognizantee of the whole transaction of the sale from Wilkinson to Buchanan, and knows the whole of it to be fair and honest; that he never heard of the claim against Wilkinson until some time afterwards, when the said steamer was seized as Wilkinson's property. That the sale was a fair business transaction. Wilkinson took his trunk of the steamboat Nashville, and left her either the day on which the above named sale was effected or the next day. That after the above named sale, witness ceased to be clerk of the said boat, but made one trip afterwards in her as passenger; that it was on her return trip, that she was seized by the sheriff. That witness was living on board said steamer, but not in the employ of said boat when she was seized as aforesaid. The aforementioned bill of sale was signed the same day on which it was dated. The said bill of sale was written and dated by witness before the signing of the same, which was about a week before the said boat was seized by the sheriff, at the suit of Oakey, as the property of Wilkinson as above

we started in peace to end so. Come as soon as you can and you will find me here. I will do all I can. Give your family my best respects. I can get a full load here for New Orleans or Vicksburg. I hope if you are detained you will write me as soon as possible and let me know what to do. Yours, truly.

Signed, W. WILKINSON,

And directed as follows, to Capt. WM. BUCHANAN,
Lebanon, Tenn.

Bill of Sale of the Steamer Nashville from W. Wilkinson to Wm. Buchanan.

NEW ORLEANS, *January 13th*, 1839.

I do hereby certify that I have this day bargained, sold, and transferred all of my right, title, and interest in the steamboat Nashville and appurtenances, unto William Buchanan, for consideration of the sum of twelve hundred dollars, in a note of that sum payable on the first day of March 1839, said Wm. Buchanan taking upon himself the responsibility of all the debts contracted by the said boat since the second day of April 1838, and the payment of three notes held by Vanlear, Hicks & Co., against Wm. Wilkinson and Wm. Buchanan, for $2,317 50 cents, dated April 2d, 1838, payable six, twelve, and eighteen months after date.

Signed W. WILKINSON, [L. S.]

Witness
FRANCIS WELLS,
W. W. NORTHROP.

I admit the above signature is the given signature of W. Wilkinson. March 3d, 1839, for Oakey & Co.

Signed G. B. DUNCAN.

The foregoing bill of sale is endorsed as follows:

Filed April 4th, 1839.

Signed HOIT, *Deputy Clerk.*

Testimony of W. W. Northrop, taken by consent.

CIRCUIT COURT OF THE 9TH JUDICIAL CIRCUIT
OF THE UNITED STATES,
Eastern District of Louisiana.

WILLIAM BUCHANAN
vs.
CHARLES F. HOZEY.

Testimony of W. W. Northrop, taken by consent of parties, to be be read as evidence at the trial of the above entitled case, in be half of plaintiff, subject to all legal exceptions, except as to the form and manner of taking the same.

W. W. Northrop, being duly sworn, makes oath and says:

That he first went aboard the steamer Nashville some time in the month of June, 1838, as clerk of said boat, that he continued as clerk of said boat until the 12th day of January, 1839; during said time, the steamer Nashville belonged to Buchanan, the plaintiff, and W. Wilkinson. That witness attested the bill of sale from said Wilkinson to plaintiff of his, Wilkinson's interest in said steamer, as a witness; which bill of sale he saw this afternoon attached to the deposition of F. Wells, in the clerk's office of the circuit court of the United States, at New Orleans. That said bill of sale was drawn up by witness at the request of plaintiff and said Wilkinson; that he knows the bill of sale above referred to, as the one attached to the deposition of F. Wells, to be the same one drawn up by him, witness; that F. Wells, the other attesting witness, signed the same in his, witness presence; that witness saw plaintiff and said Wilkinson, in the act of signing said bill of sale, and said Buchanan and said Wilkinson both acknowledged their signatures to said bill of sale to witness, and called on him to attest the same, which he did: that witness was cognizantee of the whole transaction of the sale from Wilkinson to Buchanan, and knows the whole of it to be fair and honest; that he never heard of the claim against Wilkinson until some time afterwards, when the said steamer was seized as Wilkinson's property. That the sale was a fair business transaction. Wilkinson took his trunk of the steamboat Nashville, and left her either the day on which the above named sale was effected or the next day. That after the above named sale, witness ceased to be clerk of the said boat, but made one trip afterwards in her as passenger; that it was on her return trip, that she was seized by the sheriff. That witness was living on board said steamer, but not in the employ of said boat when she was seized as aforesaid. The aforementioned bill of sale was signed the same day on which it was dated. The said bill of sale was written and dated by witness before the signing of the same, which was about a week before the said boat was seized by the sheriff, at the suit of Oakey, as the property of Wilkinson as above

stated; that said bill of sale was signed by plaintiff and said Wilkinson, directly it was written; that witness has frequently seen said Wilkinson write, and thinks that the letter which he saw attached to the deposition of F. Wells in above named case, in the clerk's office of the circuit court of the United States, at New Orleans, to be in the handwriting of said Wilkinson, but never read the said letter as he is aware of; but when he saw said letter attached to the deposition of F. Wells, he examined it sufficient to say that it is in the handwriting of said Wilkinson.

Cross Examined.

Has no interest in the event of this suit; all the matters to which he bears testimony are of his personal knowledge. He has heard, and believes, that at the time Buchanan purchased out the interest of Wilkinson, he, Buchanan, was a man of considerable property in Tennessee, somewhere, he thinks, in the neigborhood of Nashville. The bargain for the purchase and sale of the Nashville was made on the same day the bill is dated.

Signed W. W. NORTHROP.

Subscribed and sworn before me, this 13th December, 1839.

Signed D. N. HENNEN, *Clerk.*
By A. PIERSE,
Deputy Clerk.

Endorsed:

Signed D. N. HENNEN, *Clerk.*
By A. PIERSE,
Deputy Clerk.

Filed 13th December, 1839.

Afterwards, to wit, on the 12th day of April, 1839, the folowing commission issued to take the testimony of certain witnesses, residing in Nashville, Tennessee:

CIRCUIT COURT OF THE UNITED STATES,
For the Eastern Distrct of Louisiana.

To Elisha S. Hall, a Justice of the Peace in Nashville, Tennessee:

Know ye, that reposing special trust and confidence in your integrity and abilty, we hereby authorise and require you, that you call and cause to come before you certain witnesses, and them duly examine on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein William Buchanan is plaintiff, and Charles F. Hozey is defendant, and the same examinations so taken and reduced to writing, you certify under your hand and seal, and send, enclosed, to this court, without

delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the city of [L. S.] New Orleans, this 12th day of April, Anno Domini, 1839, and the 63d year of the Independence of the United States of America.

Signed J. G. A. HOIT,
Deputy Clerk.

CIRCUIT COURT OF THE UNITED STATES,
In and for the Ninth Judicial Circuit and Eastern District of Louisiana.

WILLIAM BUCHANAN,
vs.
CHARLES F. HOZEY, Sheriff of the Parish of Orleans.

Interrogatories to be propounded to witnesses whose depositions, taken under oath at Nashville, Tennessee, are to be read as evidence on the trial of the above entitled suit.

Interrogatory 1st. To one of the firm of Vanlear, Hicks & Co. or Hicks, Vanlear & Co. Are you acquainted with the plaintiff in this suit?

Interrogatory 2d. Did the firm of which you are now or were then a member, of Hicks, Vanlear & Co. or Vanlear, Hicks & Co. of Nashville, Tennessee, ever own the steamboat Nashville? If yea, from whom did they purchase said boat, at what time, and to whom did they sell her, at what time, and for what consideration?

Interrogatory 3d. What was the interest of each of the purchasers in said boat? Were they equal share and share alike, or was their interest as one share to five? State further whether possession did or did not accompany said sale; this question applies to the sale of said steamboat Nashville by the firm of Hicks, Vanlier & Co. or Vanlier, Hicks & Co. State whether after your sale your firm or the person from whom you purchased retained any interest in said steamboat.

(Signed,) PEYTON & PEIRCE,
Attorneys for Plaintiff.

Cross Interrogatories.

1st. Each witness answering any one of the interrogatories in chief will state his name, age, residence and employment, also his means of knowledge touching the matters about which he is now questioned? And whether he is related to or connected with the plaintiff, and if aye, in what degree?

2d. If you speak of any act of sale, say whether the same was

verbal or in writing; if in writing annex the same, if that he possible; if not, annex a copy; and, if that be not practicable, state why, and mention the contents of said bill of sale with as much accuracy as your memory will permit, and particularly specify the date, terms and conditions of the sale.

These cross interrogatories are propounded with a full reservation for the defendant to object to any such evidence as the plaintiff propes to offer in support of the allegations in his petition, and especially to the evidence intended to be taken in answer to the questions now propounded by the plaintiff.

(Signed,) L. C. DUNCAN,
For Defendant.

STATE OF TENNESSEE,
Davidson County, ss.

Be it remembered that in pursuance of the annexed commission from the circuit court of the United States for the Eastern District of Louisiana, I, Elisha S. Hall, an acting justice of the peace in and for the county of Davidson, State of Tennessee, residing in Nashville, in said State, have caused to come before me, at my office, on the 2d day of May, 1839, Anthony W. Vanlier, witness, produced on the part of plaintiff, in a certain matter of controversy now depending in said circuit court, wherein William Buchanan is plaintiff and Charles F. Hozey defendant. The said witness being first duly sworn, answers and deposes to the annexed interrogatories, as follows:

First. I know the plaintiff.

Second. The firm of Hicks, Ewing & Co. of which firm I was a member, did own the steamer Nashville. After the purchase of said boat Mr. Ewing withdrew from the firm, and said boat became the property of Vanlier, Hicks & Co. Said boat was originally purchased of Johnson, Keybun & Co. some time in the year 1836. After the purchase we let Ammon Davis have one-half of said boat. About the last of March, 1838, Vanlier, Hicks & Co. and said Davis sold said boat to William Buchanan and William Wilkinson for the sum of nine thousand dollars I think, and possession of her given to them.

Third. I do not know what the interest of each was, we made a bill of sale of her to them jointly; the possession followed or accompanied said sale. Our firm retained no interest in her after the sale, and I do not know, nor did I ever hear that the firm of whom we bought had or retained any interest in her.

To the cross interrogatories of the defendant, he answers,

First. My name is stated in the caption of this deposition. I am about fifty years of age, residence Nashville. I am engaged in the manufacture of iron. My means of knowing can be seen in my answers to the interrogatories of the plaintiff. I am not related in any degree to plaintiff.

Second. There was a bill sale given by Vanlier, Hicks & Co.

and Ammon L. Davis to said Wilkinson an Buchanan. I have no means of giving a copy, as I did not retain one as I have stated. The sale was made of our interest in said boat, transferred to them by bill of sale in March, 1838, for the consideration I have stated.

(Signed,) ANTHONY W. VANLIER.

STATE OF TENNESSEE,

Davidson County, ss.

I, Elihu S. Hall, an acting justice of the peace in and for the county and State aforesaid, residing in Nashville, do certify that the foregoing deposition was sworn and subscribed to before me at the time and place mentioned in the caption, and was reduced to writing by me.

In witness whereof I have hereto set my hand and seal this 2d day of May, 1839.

(Signed,) E. S. HALL, [L. S.]

Endorsed as follows: At the iqeuest of Thomas N. Pierce, open ed by me this 22d May, 1839.

(Signed,) D. N. HENNEN, *Clerk.*

Affidavit of John Waller.

WILLIAM BUCHANAN, }
vs. }
CHARLES F. HOZEY. }

John Waller makes oath and says, that he went on board the steamer Nashvill as pilot about the 15th of November, 1838, and continued in that capacity on board her untill she was seized at the suit of Oakey & Co. Witness knows that before Buchanan came down, the Nashville made two trips, with Wilkinson as master and part owner, one to Bayou Tunica, and the other to Red river. In both trips she stopped at Bayou Sara. In both of these trips Wilkinson seemed anxious to sell out his interest in the boat, which he represented to be a small one. Witness saw Wilkinson sign the bill of sale for his interest in the boat to Buchanan, and Northrop and Wells sign the same as witnesses. Wilkinson, Buchanan, Northrop, and Wills and E. Hardwick, after the signing the bill of sale, left the boat together, with the purpose, as witness understood, of having it recorded in the notary's office. On their return Buchanan wished to go to the custom house and have the boat's papers changed, but was told that it would make no difference, and he could do that after the next trip, and on his return Buchanan seemed to witness to be very much pleased at being once more free from all partners, and particularly from Wilkinson, whom Buchanan seemed to consider had grossly mismanaged the boat and sunk money by her. Buchanan gave a treat to all on

board to celebrate his becoming sole owner of the boat; while all the rest were drinking, Wilkinson took his trunk and left the boat. All present drank Buchanan's health as captain and owner of the boat. On the next day she left for Plaquimine, Buchanan going on board. In a conversation during this trip, in speaking of the value of the boat, witness and Hardwick were both of opinion that she was a cheap bargain at eight thousand dollars, according to the contract of charter party, and that by adding a few hundred dolars expense, in having false sides put on her, she would be worth twelve thousand dollars. Witness knows the Nashville had a first rate hull, one which stood A, No. 1, at the insurance office, and a first rate engine. Witness will have been seventeen years and eleven months on the river, the 5th of January, 1840, is well acquainted with steamboats and their value, and thinks the Nashville was then well worth between eight and nine thousand dollars.

When the Nashville had returned from the last named trip, viz, the trip she made after the signing the bill of sale above alluded to, and before her departure, she was seized at the suit of Oakey & Co. by the sheriff. Witness saw Mr. Payne, a member of the firm of Oakey & Co., on board, in company with the officer, when she was seized, and before they left the boat, Buchanan showed the officer and Mr. Payne the bill of sale above alluded to, and told them Wilkinson had no interest in the boat, and Captain Hardwick told them the same thing. Mr. Payne notwithstanding told the officer to seize her any how, which he did. Mr. Payne saying if he could not make money out of the boat, he would seize Wilkinson's body.

Buchanan, the next day, consulted witness as to what he had best do. Witness advised him to bond the boat. Buchanan said he was a stranger and could not give security. Witness accompapanied Buchanan to several mercantile houses to endeavor to get the boat bonded, Buchanan offering to put the boat's papers in their name, if they would bond her, which they all refused to do, and Buchanan exerted himself to get some one to bond her, and proposed to witness to put the boat in his name if he would get her bonded, which witness refused, as he would not go security for any one. Witness afterwards accompanied Buchanan and La Rogue to the sheriff's office, when they arrived there Buchanan or La Rogue handed the sheriff, Hozey, a letter. Buchanan called on witness to witness it. Buchanan, at the same time, showed sheriff Hozey the bill of sale above alluded to, and Hozey read it, and said it was mighty good, and told Buchanan he might go where he pleased. This was in the morning, between 10 and 11 o'clock, and on the same day the keeper was discharged from the boat. The captain of the Nashville then proceeded to take in freight, and she was to start that morning, and passengers came on board that evening. When the steam was up, preparatory for departure, the officer came on board and re-seized her, and told them they could not go, and the fires were put out. The boat was engaged in a profitable

trade, and the crew, as witness feels fully confident, and witness, for one, would not have seized the boat, had she not been first seized by Oakey & Co., as the boat was making money, and they knew she would pay them. Next day Buchanan went ashore to try and settle the matter, and Hardwick got up steam and was putting off before Buchanan could get on board, and while Buchanan was ashore; witness thinks Buchanan has sustained damages by the seizure of Oakey & Co., besides the loss of the value of the boat, which was between eight and nine thousand dollars, to about five thousand dollars from loss of time, vexatious suits, and being kept out of his money, besides being thrown out of a profitable trade.

I object to this witness' testimony, being chiefly hearsay, and the declarations of the plaintiff himself.

Deponent is still a creditor of Buchanan for his wages on the Nashville, say for about $40 or upwards, and has security for it. When the Nashville was seized and sold by the defendant, the proceeds did not pay quite half what she owed, on account of the privileged claims, he means the privileged claims, that were against her, when Buchanan purchased her from Wilkinson.

Signed, JOHN WALLER.

Sworn to before me, this 24th December, 1839.

Signed, HENNEN, *Clerk.*

Endorsed—filed December 24th, 1839.

Signed, HENNEN, *Clerk.*

Affidavit of William Buchanan.

BUCHANAN *vs.* HOZEY.

William Buchanan, the plaintiff in this case, being duly sworn, makes oath and says, that he lost the bill of sale from Vanleer, Hicks, & Co. for the steamer Nashville, to him and Wilkinson, by accidentally dropping the same, with other papers contained in a pocket book, overboard, in the Mississippi river, about the 9th or 10th of November, 1838.

Signed, WILLIAM BUCHANAN.

Sworn to before me, this 23d December, 1839.

Signed, HENNEN, *Clerk.*

And endorsed—filed December 23d, 1839.

Signed, HENNEN, *Clerk.*

Admissions.

Plaintiff admits that the bill of sale, spoken of by the witness, Wells & Northrop, dated 13th January, 1839, was never recorded in any public office, especially not in the custom-house, at New Orleans. Plaintiff also admits, that the proceeds of the sale, as made by the sheriff in the case of Oakey vs. Wilkinson & McCartle, were appropriated to the payment of privileged claims against the boat existing previous to, and at the time of said sale, and did not fully satisfy the same. The whole amount of the privileged claims was about $3,000. Oakey never received a dollar on account of the sale made by Hozey. Of the above amount which is not recollected precisely, about one-third were debts contracted after the charter party, and for which the charterers were to pay, and Buchanan ultimately liable. Of the price the boat sold for, $1,550 were applied to the payment of privileged debts; of the debts paid out of the $1,550, $1,050 paid crew, most of which was contracted for before the charter party. $250 and $300, mostly paid to claims contracted after the charter party.

Exhibit B.

S. W. Oakey
vs.
C. McCarstle & W. Williamson. } District Court, New Orleans, January 25, 1839.

To Mr. Hozi, *Sheriff of the Parish and City of New Orleans.*

Sir: This is to notify you that, on the 12th instant, the steamboat Nashville, which was seized by your deputy, Mr. Wiggins, on the 19th instant, in an execution issued in the above cause, as the property of said W. Wilkinson, was duly chartered by them, owners, said Wilkinson and Mr. William Buchanan, to Ennergy Hardwick and Songy Reynaud, from said 12th instant to the first day of March next, and conditionally sold to them, for the sum of eight thousand dollars, per notorial act, before ——— Christy, notary public, in and for the city of New Orleans. That, on the 13th instant, the said W. Wilkinson sold and conveyed, by private act, all his right, title, and interest, in said steamboat Nashville, to said William Buchanan, which said private act of sale was made known to your deputy, said Wiggins, at the time he came on board for the purpose of seizing said steamboat, and the same is herewith submitted for your inspection and information. You are notified that said steamboat is advertised to leave on her voyage at 6 o'clock this evening; that she is profitably employed in the trade for which she was chartered, and the parties will hold you responsible for all losses and damages sustained by them, and which they

may sustain, in consequence of the illegal seizure and detention of said boat; and you are hereby required to release the same.

Signed, WM. BUCHANAN,
E. HARDWICK.

Bill of Exceptions.

WILLIAM BUCHANAN } Circuit Court of United States.
vs.
CHARLES F. HOZEY. }

This cause coming on to be heard on the 15th day of January, 1840, and before the swearing the jury in this case, Balie Peyton, attorney of plaintiff, moved the court to strike out all that part of the defendant's answer which alleged fraud in the sale from Wilkinson to plaintiff, to wit, beginning at the words "that if any sale," and ending at the words "to defeat the claims of his honest creditors," on the second page of said answer, and the court gave defendant's attorney time to be heard on said motion. And on the 16th January, 1840, on argument of counsel, it was ordered by the court that the part of the answer above mentioned be stricken out, to which opinion and ruling of the court, the defendant, by his counsel, tendered this his bill of exceptions, and prayed that the same might be allowed, signed, and sealed, which is accordingly done.

Signed, P. K. LAWRENCE, *U. S. Judge.*

Endorsed—filed 16th January, 1840.
Signed, A. PIERSE, *Deputy Clerk, for*
D. N. HENNEN, *Clerk.*

BUCHANAN } *vs.* HOZEY. }

Be it remembered, that at the trial of this cause, the counsel of the defendant moved the court to instruct the jury that, by the act of Congress, bills of sale of ships and vessels, to be valid, must be enrolled in the custom-house; and as the bill of sale, on which the plaintiff relies, is admitted not to have been enrolled, the same cannot be considered as legal title; but the court refused so to charge the jury, saying to the jury, that a bill of sale, accompanied by possession, constituted a good title in law; to which opinion of the court, by his counsel, the defendant tendered this his bill of exceptions, and prayed that the same be signed and sealed, which is accordingly done in open court, on the trial, this 16th January, 1840.

Signed, P. K. LAWRENCE, *U. S. Judge.*

Endorsed—filed 16th January, 1840.
Signed, A. PIERSE, *Deputy Clerk, for*
D. N. HENNEN, *Clerk.*

Motion for New Trial.

UNITED STATES CIRCUIT COURT,
Ninth Circuit, Eastern District of Louisiana.

Saturday, January 18th, 1840. The court met pursuant to adjournment. Present, the honorable Philip K. Lawrence, district judge.

WILLIAM BUCHANAN,
vs.
CHARLES F. HOZEY.

On motion of L. C. Duncan, Esq., of counsel for the defendant, ordered that the plaintiff shew cause on the twentieth instant, why a new trial should not be granted, on the ground that the verdict is contrary to evidence, and that the damages given are excessive and vindictive.

Monday, January 20th, 1840. The court met pursuant to adjournment. Present, the honorable Philip K. Lawrence, district judge.

WILLIAM BUCHANAN,
vs.
CHARLES F. HOZEY.

The rule taken by the defendant to shew cause why a new trial should not be granted, came on this day, and was argued by counsel. Thereupon it was considered by the court that the said motion be overruled.

Petition for Writ of Error, &c.

To the honorable the Justices of the Circuit Court of the United States, in and for the Ninth Circuit and holding sessions in the Eastern District of Louisiana :

The petition of Charles F. Hozey, residing in New Orleans, respectfully shows, that in the suit No. 423, on the docket of your honorable court, entitled William Buchanan *vs.* Charles F. Hozey, your present petitioner, who is the defendant in said suit, is advised and believes there is manifest error in the final judgment of this court rendered against him, the said Hozey, and signed on the 25th day of January, 1840, wherefore he respectfully prays that a writ of error may be allowed to him, returnable unto the honorable the Supreme Court of the United States, and that the same operate as a supersedeas of the said judgment, on your petitioners giving such bond and security as your honors may direct. And as in duty bound.

Signed, L. C. DUNCAN,
Attorney for Petitioner.

Order of Court.

Let a writ of error be granted in this case, to act as a supersedeas, on defendant's giving bond in the sum of thirteen thousand dollars, with S. W. Oakey, George E. Payne, and E. F. Jenkins as sureties. Conditioned according to law.

Signed, P. K. LAWRENCE,
United States Judge.

Bond.

Know all men by these presents, that we, Charles F. Hosey, as principal, and Samuel W. Oakey, George E. Payne and Elisha F. Jenkins, as securities, all residing in the city of New Orleans, are held and firmly bound to William Buchanan, a citizen of the State of Tennessee, residing in Wilson county, Tennessee, his heirs, executors, administrators and assigns, in the sum of thirteen thousand dollars ($13,000), which payment well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, administrators, and assigns, firmly by these presents, sealed with our seals, and dated this thirty-first day of Jannary, one thousand eight hundred and forty.

Whereas, the above bound Charles F. Hozey, has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in this suit, lately depending and decided in the circuit court of the United States, for the ninth circuit, holding session in and for the eastern district of Louisiana, wherein said William Buchanan is plaintiff and said Charles F. Hozey is defendant. Now the condition of this obligation is such, that if the said Charles F. Hozey, the said plaintiff in error shall prosecute his said writ of error to effect, and pay all damages and costs, if he fail to make his plea good, then this obligation to be void, else to remain in full force and effect.

Witness our hands this thirty-first day of January, one thousand eight hundred and forty.

CHARLES F. HOZEY, [L. S.]
S. W. OAKEY, [L. S.]
GEORGE E. PAYNE, [L. S.]
E. F. JENKINS. [L. S.]

Witness to signature of S. W. Oakey,
GEORGE E. PAYNE, and
C. F. JENKINS.
Witness to signature of C. F. Hozey,
L. C. DUNCAN,
G. S. HAWKINS.

CLERK'S OFFICE, CIRCUIT COURT OF THE UNITED STATES,
Ninth Judicial Circuit, Eastern District of Louisiana.

I, Duncan N. Hennen clerk of the circuit court of the United States, for the ninth judicial circuit and eastern district of Louisiana, do hereby certify, that the foregoing twenty-five pages contain a full and complete transcript of the record of the pleas, proceedings, pleadings, evidence, and all other matters of record in this office, in a certain suit pending in said court, between William Buchanan, complainant, and Charles F. Hozey, defendant, No. 423 of the docket of said court, as fully as the same remains on file in this office.

In witness whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, [L. S.] this twenty-eighth day of October, in the year of our Lord one thousand eight hundred and forty, and the sixty-fifth of the Independence of the United States of America.

DUNCAN N. HENNEN, *Clerk.*

I, Philip K. Lawrence, judge of the district court of the United States for the eastern district of Louisiana, and one of the judges of the circuit court of the United States, for the ninth judicial circuit, and said eastern district of Louisiana, do hereby certify, that Duncan N. Hennen, who subscribed the above certificate, is now and was at the time of so doing, the clerk of said circuit court of the United States, ninth circuit and eastern district of Louisiana, and that faith and credit are, and ought to be given to his attestations as such; and that the above certificate is in due form of law.

Given ander my hand and seal, at New Orleans, this 14th day of November, 1840.

P. K. LAWRENCE, *U. S. Judge.*

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the Judges of the Circuit Court of the United States, ninth Judicial Circuit, and Eastern District of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea, which is in the circuit court before you or some of you, between William Buchanan, plaintiff, and Charles F. Hozey, defendant, a manifest error hath happened, to the great damage of said Charles F. Hozey, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, on the second

Monday of January next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this second Monday of January, 1840.

DUNCAN N. HENNEN, *Clerk.*

The United States of America to William Buchanan, Esq., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the ninth judicial circuit, and eastern district of Louisiana, wherein Charles F. Hozey, is plaintiff in error, and yourself is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the party in that behalf.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 3d March, 1840.

P. K. LAWRENCE, *U. S. Judge.*

Received March 3d, 1840, and on the 20th of same month served a copy of the within citation on William Buchanan, Esq., by handing a copy of the same, to Bailie Peyton, Esq., his attorney, at the city of New Orleans.

Returned into court this 20th March, 1840.

M. MARIGNY, *U. S. Marshal.*

By D. O. NADAUD, *Dep. U. S. Marshal.*